

1 **Permanent Post-Fire Recovery Regulations, 2019**

2 **Title 14 California Code of Regulations**

3 **Division 1.5, Chapter 4**

4 **Subchapter 7, Article 2**

5 **Amend §§ 1038, 1038.1, 1038.2**

6 **Repeal § 1038.5**

7 **§895.1**

8

9 "Approved and Legally Permitted Structure" means, ~~for the purposes of 14 CCR § 1038(c)(1)-(5),~~ only
10 structures that are designed for human occupancy and garages, barns, stables, and structures used to
11 enclose fuel tanks.

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13 Note: Authority cited: Sections 4551, 4551.5, 4553, 4561, 4561.5, 4561.6, 4562, 4562.5, 4562.7 and
14 4591.1, Public Resources Code. Reference: Sections 4511, 4512, 4512.5, 4513, 4521.3, 4523, 4524,
15 4525, 4525.3, 4525.5, 4525.7, 4526, 4526.5, 4527, 4527.5, 4528, 4551, 4551.5, 4561, 4562, 4562.5,
16 4562.7, 4583.2, 4584, 4591.1 4597.1, 21001(f), 21080.5, 21083.2 and 21084.1, Public Resources Code;
17 CEQA Guidelines Appendix K (printed following Section 15387 of Title 14 Cal. Code of Regulations),
18 Laupheimer v. State (1988) 200 Cal.App.3d 440; 246 Cal.Rptr. 82; and Joy Road Area Forest and
19 Watershed Association, v. California Department of Forestry & Fire Protection, Sonoma County Superior
20 Court No. SCV 229850.

21
22 **§ 1038. Exemption.**

23 Timber Operations conducted pursuant to this section are exempt from the Plan preparation and
24 submission requirements (PRC § 4581) and from the completion report and Stocking report
25 requirements (PRC §§ 4585 and 4587) of the FPA. Timber Operations conducted under any notice of

1 exemption described herein shall be limited to one (1) year from the date of receipt by the Director, and
2 shall comply with all operational provisions of the FPA and District Forest Practices Rules applicable to
3 "Timber Harvest Plan", "THP", and "Plan" definitions per 14 CCR § 895.1. In-lieu practices within WLPZs
4 as specified under Article 6 of these Rules, exceptions to the Rules, and alternative practices are not
5 allowed. The following types of Timber Operations are exempt:

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7 (g) Harvesting dead or Dying Trees of any size to facilitate the removal of hazardous material and the
8 reconstruction or construction of Approved and Legally Permitted Structures that were damaged or
9 destroyed by wildfire. The provisions of a notice of exemption submitted pursuant to this subsection
10 supersede the provisions of any other notices of exemption that are submitted in the same Harvest Area.

Commented [EH1]: DECISION POINT

11 The following conditions apply:

12 (1) Only trees within three-hundred (300) feet from any point of an Approved and Legally
13 Permitted Structure that was damaged or destroyed by wildfire may be harvested.

14 (2) The timberland owner must include a certification that any trees proposed for harvesting are
15 dead or dying as a result of a wildfire which [satisfies the requirement of 1038(g) above].

Commented [EH2]: DECISION POINT

16 (3) Timber Operations conducted under this subsection shall conform to applicable city or county
17 general plans, city or county implementing ordinances, and city or county zoning ordinances
18 within which the Harvest Area is located. The Timber Operator or timberland owner shall certify
19 that the city or county has been contacted and the Timber Operations conducted under the
20 notice of exemption conforms with all city or county regulatory requirements.

21 (4) All Slash and Woody debris greater than one (1) inch but less than eight (8) inches in
22 diameter within one-hundred-fifty (150) feet of an Approved and Legally Permitted Structure that
23 was damaged or destroyed by wildfire shall be removed, chipped or piled and burned.

24 (5) All Slash created between one-hundred-fifty (150) feet and three-hundred (300) feet of an
25 Approved and Legally Permitted Structure that was damaged or destroyed by wildfire shall be

1 treated by Lopping for Fire Hazard Reduction, removed, chipped or piled and burned within
2 forty-five (45) days from the start of Timber Operations; except for the burning of piles, which
3 shall be accomplished not later than April 1 of the year following their creation; or for piles
4 created on or after September 1, not later than April 1 of the second year following creation.

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6 Note: Authority cited: Sections 4551, 4553 and 4584, Public Resources Code. Reference: Sections
7 4290, 4291, 4516, 4527, 4584, 4584.1, and 4597, Public Resources Code; and *EPIC v. California*
8 *Department of Forestry and Fire Protection and Board of Forestry* (1996) 43 Cal. App.4th 1011.(b) §

9
10 **1038.1. Additional Exceptions or Requirements**

11 Preparation or submittal of a notice of exemption described in 14 CCR § 1038, or Timber Operation
12 thereunder, shall comply with the additional exceptions or requirements as described.

13 (a) A notice of exemption, pursuant to 14 CCR § 1038, shall be submitted to the Director, on a
14 form provided by the Department, prior to the commencement of Timber Operations. The
15 form shall contain the following information:

- 16 (1) The type of exemption.
17 (2) Name(s), address, and telephone number(s) of the Timber Owner(s), timberland
18 owner(s), and Timber Operator.
19 (3) Name, address, and telephone number and license number of the RPF, if applicable.
20 (4) Legal description of the location of the Timber Operation.
21 (5) The tentative date of commencement of Timber Operations.
22 (6) A signature of the landowner certifying that they are the landowner and have read and
23 understand the information contained within the notice of exemption.

24 (b) For notices of exemption pursuant to 14 CCR § 1038, the additional requirements apply:
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(1) All Timber Operations conducted in the Lake Tahoe Region must have a valid Tahoe Basin Tree Removal Permit, as defined by TRPA, or shall be conducted under a valid TRPA Memorandum of Understanding, when such a permit is required by TRPA.

(2) The Department shall provide the appropriate RWQCB, CDFW, and CGS with copies of the submitted notice of exemption prior to the tentative date of commencement of Timber Operations.

(3) No helicopter yarding shall be allowed.

(c) The following additional exceptions or requirements apply to prepared, submitted, or a Timber Operation conducted under a notice of exemption as provided in Table 1 below.

Table 1: Additional Exceptions or Requirements

Applicable Exceptions or Requirements	Notice of Exemption Type(s)
14 CCR § 1038.1(c)(1)	14 CCR § 1038(c)(6), (d), (e), and (f)
14 CCR § 1038.1(c)(2)	14 CCR § 1038 (e) and (f)
14 CCR § 1038.1(c)(3)	Applies to all notices of exemption pursuant to 14 CCR § 1038
14 CCR § 1038.1(c)(4)(A)	14 CCR § 1038 (d)
14 CCR § 1038.1 (c)(4)(B)	14 CCR § 1038 (e) and (f)
14 CCR § 1038.1(c)(5) through (14)	14 CCR § 1038 (b), (c), (d), (e), and (f) , <u>and (g)</u>
14 CCR § 1038.1(c)(15)	14 CCR § 1038 (a), (b), (c), (d), and (e) , <u>and (g)</u>

(1) The notice of exemption shall be prepared, signed, and submitted to the Department by a RPF.

1 (2) Upon submission of the notice of exemption, a Confidential Archaeological Letter pursuant
2 to 14 CCR § 929.1 [949.1; 969.1] must be provided to the Director and the RPF shall send a
3 copy of the notice of exemption to Native Americans as defined in 14 CCR § 895.1.

4 (3) No Timber Operations on any site that satisfies the criteria listed in 14 CCR § 895.1 for a
5 Significant Archaeological or Historical Site (information on some of these sites may be
6 available from the Information Centers of the California Historical Resources Information
7 System within the Department of Parks and Recreation), except under the following
8 conditions:

9 (A) If a Significant Archaeological or Historical Site is identified by the RPF
10 preparing the notice of exemption within the project boundary, the site may
11 be preserved in place by capping or covering with a layer of soil prior to
12 submission.

13 (B) If a site has been preserved in place, the RPF preparing the notice of
14 exemption shall obtain written concurrence from a Department archeologist
15 prior to submission indicating operations will not cause damage to a
16 Significant Archaeological or Historical Site.

17 (C) The written concurrence from a Department archeologist shall be submitted
18 with the notice of exemption.

19 (4) Fuel treatments as follows:

20 (A) Slash within the Harvest Area shall be treated to achieve a maximum post-harvest
21 depth of thirty (30) inches above the ground. All Slash shall be lopped, removed,
22 chipped, piled for burning, or otherwise treated, within one (1) year from the date of
23 the Director receiving the notice except for burning. Burning shall be completed
24 within two (2) years from the date of the Director receiving the notice.
25

1 (B) Slash shall be treated to achieve a maximum post-harvest depth of eighteen (18)
2 inches above the ground on at least eighty (80) percent of the Harvest Area. All
3 Slash shall be lopped, removed, chipped, piled for burning, or otherwise treated,
4 within one (1) year from the date of the Director receiving the notice except for
5 burning. Burning shall be completed within two (2) years from the date of the
6 Director receiving the notice.

7 (5) No tractor or heavy equipment operations on slopes greater than fifty (50) percent.

8 No construction of new tractor roads on slopes greater than forty (40) percent.

9 (6) Timber Operations within any Special Treatment Area shall comply with the rules associated
10 with that Special Treatment Area.

11 (7) No tractor or heavy equipment operations on known Unstable Areas.

12 (8) No new road construction or reconstruction, as defined in 14 CCR § 895.1.

13 (9) No heavy equipment operations within the standard width of a WLPZ, as defined in 14 CCR
14 § 916.4 [936.4, 956.4] (b), except for maintenance of roads and Drainage Facilities or
15 structures.

16 (10) No known sites of rare, threatened or endangered plants or animals will be disturbed,
17 threatened or damaged.

18 (11) No Timber Operations within the buffer zone of a Sensitive Species.

19 (12) No timber harvesting within the standard width of a WLPZ, as defined in 14 CCR § 916.4
20 [936.4, 956.4] (b), except sanitation-salvage harvesting, as defined in 14 CCR § 913.3
21 [933.3, 953.3], where immediately after completion of operations, the area shall meet the
22 Stocking Standards of 14 CCR § 912.7 [932.7, 952.7] (b)(2), or, except the removal of dead
23 or dying trees where consistent with 14 CCR § 916.4 [936.4, 956.4] (b). Trees to be
24 harvested shall be marked by, or under the supervision of, an RPF prior to Timber
25 Operations.

1 (13)The Director shall notify the submitter of the date of the Director's receipt of the notice of
2 exemption. Timber Operations pursuant to the notice of exemption may not commence for
3 five (5) working days from the date of the Director's receipt of the notice of exemption unless
4 this delay is waived by the Director. If the notice of exemption is not complete and accurate,
5 the Director shall notify the submitter within five (5) working days from the date of the
6 Director's receipt, and the Timber Operations may not commence. The Director shall
7 determine whether the notice of exemption is complete, and if so, shall send a copy of a
8 notice of acceptance to the submitter; provided, however, if the Director does not act within
9 five (5) working days of receipt of the notice of exemption, Timber Operations may
10 commence.

11 (A) Timber Operations may not be conducted without a copy of the Director's notice of
12 acceptance of the notice of exemption at the operating site, except where the
13 Director has failed to act within the five (5) working-day review period.

14 (14) Before beginning Timber Operations, the LTO, RPF, or person responsible for submittal of
15 the notice of exemption shall notify CAL FIRE of the actual commencement date of
16 operations. The notification, by telephone, mail, or email, shall be directed to the appropriate
17 CAL FIRE Unit Headquarters, Forest Practice Inspector or other designated personnel. If the
18 notification is provided by mail, Timber Operations may not commence until three (3) days
19 after the postmark date of notification. The provisions of this paragraph do not supersede the
20 requirements of paragraph (13) above.

21 (15) No large old trees, defined as a tree that existed before 1800 AD and is greater than sixty
22 (60) inches in diameter at stump height for Sierra or Coast Redwoods, and forty-eight (48)
23 inches in diameter at stump height for all other tree species, or Decadent and Deformed
24 Trees with Value to Wildlife shall be harvested unless the following apply:

25 (A) The tree is not critical for the maintenance of a Late Successional Stand.

1 (B) A RPF attached to the submitted notice of exemption a written explanation
2 and justification for the harvest of the tree based on the RPF's finding of any of
3 the following:

- 4 1. The tree is a hazard to safety or property.
- 5 2. The removal of the tree is necessary for the construction of a building
6 as approved by the appropriate local jurisdiction and shown on the
7 county or city approved site plan, which shall be attached to the
8 submitted notice of exemption.
- 9 3. The tree is dead or likely to die within one (1) year of the date of the
10 proposed removal, as determined by a RPF.

11 (C) An RPF's written explanation or justification need not be attached to the
12 submitted notice of exemption if an approved Habitat Conservation Plan,
13 Sustained Yield Plan, or Plan addresses large old tree retention for the area in
14 which the large old tree is proposed for removal and the removal is in
15 compliance with the retention standards of that document.

16 Note: Authority cited: Sections 4551, 4553, and 4584, Public Resources Code. Reference: Sections
17 4527, 4584, and 4584.1, Public Resources Code.

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19 **§ 1038.2. Mapping Standards for Notices of Exemption.**

20 A submitted notice of exemption shall include a seven-and-one-half (7½) minute USGS quadrangle map,
21 or its equivalent, depicting the information as required in Table 1 below. Additional maps, which may be
22 topographic or planimetric, may be used to provide additional information, to show specific details, and
23 to improve map clarity. A larger scale map such as an assessor parcel map showing the location of the
24 Timber Operations shall be included for exemptions conducted under 14 CCR § 1038 (c). The
25 Appurtenant Roads included within the Logging Area pursuant to subsection (b) below may be shown on

1 a map which may be planimetric with a scale as small as one-half inch equals one mile. Color coding
 2 shall not be used. A legend shall be included indicating the meaning of the symbols used. The submitted
 3 notice of exemption shall indicate if more than one Yarding system is to be used and identify the
 4 systems (if more than one is used).

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 6 **Table 1: Mapping Requirements**

Applicable Mapping Requirements	Notice of Exemption Type(s)
14 CCR § 1038.2 (a)	14 CCR § 1038 (a), (c), and (g)
14 CCR § 1038.2 (b), (c), (k)	14 CCR § 1038 (b), (c)(6), (d), (e), and (f)
14 CCR § 1038.2 (d) through (f)	14 CCR § 1038(c)(6) through (f)
14 CCR § 1038.2 (g), (h), and (j)	14 CCR § 1038 (c)(6), (e), and (f)
14 CCR § 1038.2 (i)	14 CCR § 1038 (b) through (f)
14 CCR § 1038.2 (l)	14 CCR § 1038(f)

- 15 (a) Boundaries of the Harvest Area.
- 16 (b) Boundaries of the Logging Area.
- 17 (c) Location of all Roads to be used for, or potentially impacted by, Timber Operations.
- 18 (d) The classification of all Roads as Permanent Roads, Seasonal Roads, or Temporary Roads.
- 19 (e) Road(s) and Landing(s) located in a Watercourse, Lake, WLPZ, Meadows and Wet Areas other
 20 than at road Watercourse crossings.
- 21 (f) Location of water drafting sites.
- 22 (g) Public Roads within one-quarter (¼) mile of the Harvest Area.
- 23 (h) Location of portions of the Harvest Area with an Extreme Erosion Hazard Rating.
- 24 (i) Location of all Watercourses and Lakes with Class I, II, III or IV waters.
- 25 (j) Location of known Unstable Areas.

1 (k) Location of any Special Treatment Areas.

2 (l) Location of boundaries of timber-site classes needed for determination of Stocking Standards to
3 be applied, down to at least a twenty (20) acre minimum or as specified in District Forest
4 Practice Rules.

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6 Note: Authority cited: Sections 4551, 4553, and 4584, Public Resources Code. Reference: Sections
7 4527, 4584, and 4584.1, Public Resources Code.

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10 **§ 1038.5. Post-Fire Recovery Exemption**

11 ~~Persons who conduct the following types of Timber Operations are exempt from the Plan preparation~~
12 ~~and submission requirements (PRC § 4584) and from the completion report and stocking report~~
13 ~~requirements (PRC §§ 4585 and 4587) of the FPA with the following exceptions and requirements:~~

14 (1) ~~no tree that existed before 1800 A.D. and is greater than sixty (60) inches in diameter at~~
15 ~~stump height for Sierra or Coastal Redwoods, and forty-eight (48) inches in diameter at stump~~
16 ~~height for all other tree species shall be harvested unless done so under the conditions or~~
17 ~~criteria set forth in subsection 1038.5 (d).~~

18 (2) ~~all timber operations conducted in the Lake Tahoe Region pursuant to 14 CCR § 1038.5~~
19 ~~must have a valid Tahoe Basin Tree Removal Permit (as defined by the Tahoe Regional~~
20 ~~Planning Agency) or shall be conducted under a valid TRPA Memorandum of Understanding~~
21 ~~(MOU), when such a permit is required by TRPA.~~

22 (a) ~~Harvesting dead or Dying Trees of any size to facilitate the removal of hazardous material and the~~
23 ~~reconstruction or construction of Approved and Legally Permitted Structures that were damaged or~~
24 ~~destroyed by wildfire in the Counties of Lake, Siskiyou, Mendocino, Shasta, Trinity, and Napa during~~
25 ~~2018. The provisions of a notice of exemption submitted pursuant to this subsection supersede the~~

1 provisions of any other notices of exemption that are submitted in the same Harvest Area. In addition to
2 compliance with 14 CCR §§1038.1 (c)(5) through (12) inclusive and 1038.3 (p), the following apply:

Commented [EH3]: Captured within table 1 of 1038.1

3 (1) Only trees within three-hundred (300) feet from any point of an Approved and Legally
4 Permitted Structure that was damaged or destroyed by wildfire may be harvested.

5 (2) The notice of exemption shall include:

6 (A) the total acreage of the Harvest Area;

7 (B) an enlarged seven-and-one-half (7½) minute USGS quadrangle map, or its
8 equivalent, that is not less than one (1) inch equals one-thousand (1,000) feet showing
9 the location of the boundaries of the Harvest Area;

Commented [EH4]: Captured within 1038.2 and 1038.2 (a)

10 (C) a certification of ownership signed by the timberland owner and;

Commented [EH5]: Captured within 1038.1 (a)(6)

11 (D) the tentative commencement date of Timber Operations;

Commented [EH6]: Captured within 1038.1(a)(5)

12 (3) Timber Operations conducted under this subsection shall conform to applicable city or county
13 general plans, city or county implementing ordinances, and city or county zoning ordinances
14 within which the Harvest Area is located. The Timber Operator or timberland owner shall certify
15 that the city or county has been contacted and the Timber Operations conducted under the
16 notice of exemption conforms with all city or county regulatory requirements.

17 (4) All Slash and Woody debris greater than one (1) inch but less than eight (8) inches in
18 diameter within one-hundred fifty (150) feet of an Approved and Legally Permitted Structure that
19 was damaged or destroyed by wildfire shall be removed, chipped or piled and burned.

20 (5) All Slash created between one-hundred fifty (150) feet and three-hundred (300) feet of an
21 Approved and Legally Permitted Structure that was damaged or destroyed by wildfire shall be
22 treated by Lopping for Fire Hazard Reduction, removed, chipped or piled and burned within
23 forty-five (45) days from the start of Timber Operations; except for the burning of piles, which
24 shall be accomplished not later than April 1 of the year following their creation; or for piles
25 created on or after September 1, not later than April 1 of the second year following creation.

1 ~~(6) Except where necessary for safety, retain an average for the Harvest Area of not less than~~
2 ~~one (1) Decadent and Deformed Tree of Value to Wildlife, Snag, or Dying Tree per acre that is~~
3 ~~greater than sixteen (16) inches dbh and twenty (20) feet tall. This provision does not apply~~
4 ~~within one hundred fifty (150) feet of Approved and Legally Permitted Structures, roads, fire~~
5 ~~suppression ridges and infrastructure facilities such as transmission lines and towers, or water~~
6 ~~conveyance and storage facilities.~~

Commented [EH7]: Captured within 1038.1 (c)(15)

7 ~~(7) The Director shall notify the submitter of the date of the Director's receipt of the notice of~~
8 ~~exemption. Timber Operations pursuant to the notice of exemption may not commence for five~~
9 ~~(5) working days from the date of the Director's receipt of the notice of exemption unless this~~
10 ~~delay is waived by the Director. If the notice of exemption is not complete and accurate, the~~
11 ~~Director shall notify the submitter within five (5) working days from the date of the Director's~~
12 ~~receipt, and the Timber Operations may not commence. The Director shall determine whether~~
13 ~~the notice of exemption is complete, and if so, shall send a copy of a notice of acceptance to the~~
14 ~~submitter; provided, however, if the Director does not act within five (5) working days of receipt~~
15 ~~of the notice of exemption, Timber Operations may commence.~~

Commented [EH8]: Captured within 1038.1(c)(13)

16 ~~(A) Timber Operations may not be conducted without a copy of the accepted notice of~~
17 ~~exemption at the operating site, except where the Director has failed to act within the~~
18 ~~five (5) working day review period.~~

Commented [EH9]: Captured within 1038.1(c)(13)(A)

19 ~~(b) A Person conducting Timber Operations under an exemption as described in this section shall:~~

20 ~~(1) be limited to one year from the date of receipt by the Department, and;~~
21 ~~(2) shall comply with all operational provisions of the Forest Practice Act and District~~
22 ~~Forest Rules applicable to "Timber Harvest Plan", "THP", and "Plan".~~

Commented [EH10]: Captured within 1038 preamble

23 ~~(3) Before beginning Timber Operations, the Timber Operator shall notify the~~
24 ~~Department of the actual commencement date of operations. The notification, by~~
25 ~~telephone, mail, or email, shall be directed to the appropriate CAL FIRE Unit~~

Headquarters, Forest Practice Inspector or other designated personnel. If the notification is provided by mail, Timber Operations may not commence until three (3) days after the postmark date of notification.

Commented [EH11]: Captured in 1038.1(c)(14)

(c) In-lieu practices of Watercourse and Lake Protection Zones as specified under Article 6 of these Rules, exceptions to Rules, and alternative practices are not allowed.

Commented [EH12]: Captured within 1038 preamble

(d) Harvesting of large old trees shall only occur when:

- (1) the tree is not critical for the maintenance of a Late Successional Stand and
- (2) an RPF attaches to the exemption an explanation and justification for the removal based on the RPF's finding that one or more of the criteria or conditions listed under subparagraphs (A), (B), (C) are met. This requirement need not be met if an approved management document, including but not limited to a HCP, SYP, NTMP, WFMP, or PTEIR, addresses large old tree retention for the area in which the large old tree(s) are proposed for removal and the removal is in compliance with the retention standards of that document.

(A) The tree(s) is a hazard to safety or property. The hazard shall be identified in writing by an RPF or professionally certified arborist;

(B) The removal of the tree(s) is necessary for the construction of a building as approved by the appropriate county/city permitting process and as shown on the county/city approved site plan which shall be attached to the Notice of Exemption;

(C) The tree is dead or is likely to die within one year of the date of proposed removal, as determined by an RPF or professionally certified arborist.

Commented [EH13]: Captured within 1038.1(c)(15)

(e) A Person submitting an exemption under 14 CCR § 1038.5 shall submit to the Director a notice of proposed Timber Operations, prior to commencement of Timber Operations, on a form provided by the Department. The form shall contain the following information:

- (1) Type of operation to be conducted.

Commented [EH14]: 1038.1(a)(1)

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(2) Names, address, and telephone numbers of the Timber Owner, Timberland owners, and

Timber Operator.

Commented [EH15]: 1038.1(a)(2)

(3) Legal description of the location of the Timber Operation.

Commented [EH16]: 1038.1(a)(4)

(4) A 7 1/2 minute quadrangle map or its equivalent showing the location of the Timber

Operation.

Commented [EH17]: 1038.2

(5) The tentative commencement date of timber operations

Commented [EH18]: 1038.1(a)(5)

Note: Authority cited: Sections 4551, 4553 and 4584, Public Resources Code. Reference: Sections 4290, 4291, 4516, 4527, 4584 and 4597, Public Resources Code; and *EPIC v. California Department of Forestry and Fire Protection and Board of Forestry* (1996) 43 Cal. App.4th 1011.